IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.03.2007

CORAM:

THE HON'BLE MR. JUSTICE V.DHANAPALAN

W.P. No. 22264 of 2006

and
M.P.No.2 of 2006

J.Manoharan .. Petitioner

-vs-

1. The Conservator of Forests,
   Dharmapuri Circle,
   Dharmapuri.

2. G.Shivaji, .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for a writ of certiorarified mandamus as stated therein.

For Petitioner : Mrs.Selvi George
For R-1 : Mr.Titus Jesudoss (Spl.G.P.)
For R-2 : Mr.R.Kannan

O R D E R

This petition has been filed seeking a writ of certiorarified mandamus to call for the records of the first respondent issued in Proc.No.6329/2006/G1 dated 06.07.2006 and to quash the same and consequently, direct the first respondent to allow the petitioner to continue in Interface Forestry Range, Krishnagiri, Interface Forestry Division, Uthangarai.

2. The petitioner joined in the Tamil Nadu Forest Department in the year 1978 as Forester and was subsequently promoted as Forest Ranger in the year 2000 and posted at Gobichettipalayam Range, Erode wherefrom he was transferred to Survey and Demarcation Range, Hosur Division, Dharmapuri District. Based on his request for transfer, he was transferred to Interface Forestry Range, Krishnagiri Interface Forestry Division, Uthangarai, by an order of the first respondent dated 15.05.2006 and he also took charge on the same day. While so, he was transferred from the said place to the Forest Protection Squad, Dharmapuri, by an order dated

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06.07.2006, passed by the first respondent which is impugned in this writ petition.

3. Heard Ms.Selvi George, learned counsel for the petitioner, Mr.Titus Jesudoss, learned Special Government Pleader for the first respondent and Mr.R.Kannan, learned counsel for the second respondent.

4. The first and foremost submission made by the learned Special Government Pleader is that the petitioner has an appeal remedy to redress his grievance as per Rule 57 of the Tamil Nadu State and Subordinate Service Rules introduced vide G.O.Ms.No.35 P & AR(S) Department dated 30.01.1996, which reads as under:

> "a. Where no specific provision for appeal or review is made in these rules, or in the specific rules against any order passed under the said rules for redressal of grievances, an appeal or review, as the case may be, shall lie to the authority to which an appeal or review petition would lie against an order of dismissal;
>
> b. An appeal or review under sub-rule (a) shall be preferred within two months from the date of receipt of the orders by the appellant or the review petitioner, as the case may be;
>
> c. Every appeal or review under sub-rule (a) shall be disposed of within four months from the date of the receipt of the appeal or review petition;
>
> d. The appellate or reviewing authority may issue interim directions as it deems fit, pending final decision thereon in order to avoid any irreparable loss to the appellant or review petitioner or to avoid administrative convenience."

5. From a perusal of the above Rule, it is quite clear that a Government employee is having an appeal remedy to have his grievance redressed and his appeal has to be disposed of within a period of four months from the date of receipt of such appeal by the appellate authority and even interim orders be passed in such an appeal.

6. This contention of the learned Special Government Pleader has been rebutted by the learned counsel for the petitioner. In the matters of this kind, there is no need to prefer an appeal as there is a statutory violation and therefore, this appeal remedy need not be exhausted in this case, as there is a peculiar circumstance involving a transfer within two months and the first transfer was ordered on administrative reasons.

7. If that being the position, whether the appeal remedy has to be exhausted or not, is a question before this Court. At this

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stage, the learned Special Government Pleader as well as the learned counsel for the second respondent contended that the First Bench of this Court, in W.A.No.932 of 2006 in the matter of K.Sekar vs. The Conservator of Forests, Erode Circle, Erode and another, along with the miscellaneous petition, has held in paragraph Nos.2 and 3 as follows:

> "2. The learned single Judge, without going into the merits of the case, has dismissed the writ petition on the ground of right of appeal/review available to the appellant against the impugned order of transfer. We are now informed that the appellant has been transferred to Bargur range, which is 60 kms. from the place where he was transferred. We see no reason to interfere with the order of the learned single Judge.
>
> 3. The writ appeal is dismissed. Connected M.P. is closed. No costs."

8. The learned counsel appearing for the petitioner herein is the counsel who appeared in the above said writ appeal and writ petition. Though the learned counsel for the petitioner has specifically contended that having regard to the peculiar circumstances of this case, the appeal remedy is not exhausted, but even then, in view of the decision taken by the First Bench of this Court, I am not inclined to consider the merits of this case at this stage, as the effective appeal remedy under the statute itself is available to the petitioner, which can be exhausted by him for the redressal of the grievance as the transfer of the petitioner as argued by the learned counsel for the petitioner is not in violation of the statutory rules and other provisions.

9. Therefore, in the circumstances of the case, I am of the considered view that the grievance of the petitioner can be redressd by exhausting the appeal remedy under Rule 57 of the Tamil Nadu State and Subordinate Service Rules. Accordingly, I direct the petitioner to exhaust the appeal remedy and if the petitioner has not preferred an appeal, he is at liberty to proceed to make an appeal to the competent authority, within a period of four weeks from the date of receipt of a copy of this order and the authority concerned, while considering the appeal need not take into consideration, the period of limitation and also exclude the present writ petition which is under consideration before this Court, but consider the same in accordance with law and on merits, within a period of two weeks thereafter.

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10. With the above direction, this writ petition is disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

gms

To

1. The Conservator of Forests,
   Dharmapuri Circle,
   Dharmapuri.

1 cc to Mrs.Selvi Geroge, Advocate, Sr. 14234
1 cc to Spl. G.P. (Forest) Sr. 14196
1 cc to Mr.R. Kannan, Advocate, Sr. 13729

W.P.No.22264 of 2006

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